IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

MACA.No. 1011 of 2007()

IA NO.1462/2006 IN OPMV.1044/2006 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT/3RD RESPONDENT:

UNITED INDIA INSURANCE COMPANY LTD.,
REPRESENTED BY ITS DEPUTY MANAGER,
REGIONAL OFFICE, SHARANYA, HOSPITAL ROAD,
KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: PETITIONERS 1 TO 5 & RESPONDENTS 1 & 2 RESPECTIVELY:

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1. K.R.ANTONY, S/O.RAPHEAL,
AGED ABOUT 51, KURISINGAL HOUSE,
NEAR MANASSERY CHURCH, SOUDI, MUDANVELI P.O.,
KOCHI-7.

2. ELSY ANTONY, W/O.ANTONY,
AGED 49 YEARS, -DO-,-D0.

3. THOMAS SHAJI K.A @ SHAJI,
S/O.ANTONY, AGED 30 YEARS, -DO-,-DO-.

4. MARY SHIJI K.A. @ SHIJI, D/O.ANTONY,
AGED 30 YEARS, -DO-.

5. SHOJAN K.A, S/O.ANTONY,
AGED 26 YEARS, -DO-.

6. ANISH JOSEPH P.S., AGED 25,
PULICKAL HOUSE, KANNAMALI P.O., KOCHI-8.

7. P.B.ANTONY, 9/217, -DO-.

R1 TO R5 BY ADV. SRI.T.A.SHAJI
SMT.P.C.JEEVA

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1011 OF 2007

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Dated this the 20th day of November, 2007

J U D G M E N T

Third respondent-Insurer in I.A. No.1462 of 2006 in O.P (MV) No.1044 of 2006 on the file of the Motor Accidents Claims Tribunal, Ernakulam is the appellant. Appeal is filed against the interim award passed by the Tribunal by which an amount of Rs.50,000/- was awarded to the petitioners, who are the legal heirs of one deceased Shalan. In the O.P. petitioners filed I.A. No.1462 of 2006 claiming compensation under Section 140 of the Motor Vehicles Act. Appellant contended that since the deceased was a pillion rider, the company was not liable to indemnify the insured. Tribunal held that though the deceased was a pillion rider, there was valid insurance coverage and hence the Insurer is liable. Challenging that interim award, this appeal is filed.

2. Learned counsel appearing for the appellant has argued that the specific contention raised by the appellant before the Tribunal was that though the policy issued was a comprehensive one, no additional premium was collected. It

is argued that the policy was styled as a comprehensive policy only because it covered not only personal injury but also property damages. Learned counsel for the appellant relied on the decision reported in Yallwwa v. National Insurance Co. Ltd. (2007) 6 SCC 657) in support of the case, wherein it was held that an award under Section 140 of the Act can be passed only after the parties concerned have filed their pleadings and have been given a reasonable opportunity of being heard. It was further held that the Tribunal must be satisfied that the conditions specified in Section 140 have been substantiated. Learned counsel for the respondents submitted that the policy involved in this case is a package policy. Section II(1)(i) of the terms and conditions of the policy provides that the Insurer is liable to indemnify the insured in respect of death or bodily injuries of any person including the person conveyed in the vehicle. Learned counsel for the appellant has argued that the liability must be legal one and then only the company can be saddled with the liability.

3. The impugned order does not give any details as to what exactly was the contention of the appellant or what exactly was the nature of the policy, etc. The Tribunal has not considered any of the matters. The Tribunal came to the conclusion that the Insurer is liable to indemnify the insured. Hence I have no other option, but to set aside the impugned award with a direction to the Tribunal to consider the same and pass orders afresh in accordance with law. For that purpose, the case has to go back.

4. In the result, the appeal is allowed. The impugned award is set aside and I.A. No.1462 of 2006 is remanded. The Motor Accidents Claims Tribunal, Ernakulam is directed to take I.A. No.1462 of 2006 in O.P(MV) No.1044 of 2006 back to file and dispose of the same afresh in accordance with law after giving both sides opportunity to adduce evidence, if so advised. The Tribunal shall dispose of the matter within two months from the date of receipt of a copy of this judgment.

5. Parties shall appear before the Tribunal on 15.1.2008.

Interlocutory Application No.1159 of 2007 shall stand dismissed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 1011 OF 2007

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J U D G M E N T

20TH NOVEMBER, 2007